

AMENDED IN SENATE AUGUST 1, 2007

AMENDED IN ASSEMBLY APRIL 10, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 793

Introduced by Assembly Member Strickland
(Coauthor: Senator Margett)

February 22, 2007

An act to amend Sections 110 and 402.1 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 793, as amended, Strickland. Property taxation: affordable housing assessments.

The California Constitution generally limits ad valorem taxes on real property to 1% of the full cash value of that property. For purposes of this limitation, existing property tax law defines “full cash value” as the assessor’s fair market value valuation of real property as shown on the 1975–76 tax bill under “full cash value” or, thereafter, the appraised value of that real property when purchased, newly constructed, or a change in ownership has occurred. Existing property tax law generally defines this “full cash value” of property as the property’s fair market value. Existing law rebuttably presumes that the fair market value of real property, other than possessory interests, is the purchase price paid in the transaction for the property. For purposes of this presumption, existing law defines “purchase price” as the total consideration provided by the purchaser or on the purchasers behalf, valued in money, whether paid in money or otherwise. Existing law requires the county assessor to consider, when valuing real property for property taxation purposes,

the effect of any enforceable restrictions to which the use of the land may be subjected. Under existing law these restrictions include, but are not limited to, zoning, recorded contracts with governmental agencies, and various other restrictions imposed by governments.

This bill would exclude from the meaning of purchase price, for purposes of the rebuttable presumption that the purchase price of real property is the fair market value of the property, the amount stated in a trust deed, recorded in conjunction with an affordable housing unit purchased by its occupant, for which that occupant is the trustor and a nonprofit or governmental agency selling authority is the beneficiary, ~~and both have contracted that a periodic payment of principal and interest will not be required for at least 20 30 years, and a governmental restriction requiring the property to remain an affordable housing unit for at least 30 years has been recorded against the affordable housing unit.~~ This bill would also require the county assessor to consider, when valuing real property for property taxation purposes, restrictions on the resale price of real property in a recorded real property deed or other recorded real property transfer document for real property that was purchased by its occupant through an affordable housing program operated by a city, a county, the state, or a nonprofit organization. By changing the manner in which county assessors assess property for property taxation purposes, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Section 2229 of the Revenue and Taxation Code requires the Legislature to reimburse local agencies annually for certain property tax revenues lost as a result of any exemption or classification of property for purposes of ad valorem property taxation.

This bill would provide that, notwithstanding Section 2229 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse local agencies for property tax revenues lost by them to the bill.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 *(a) It is important to provide affordable housing in this state.*

4 ~~(a)~~

5 *(b) Affordable housing programs provide families with an*
6 *opportunity to better their lives and the lives of their children by*
7 *making available the American dream of home ownership.*

8 ~~(b)~~

9 *(c) Section 402.1 of the Revenue and Taxation Code already*
10 *requires county assessors to consider the effect of enforceable*
11 *restrictions on land when assessors value that land for property*
12 *taxation purposes.*

13 ~~(c)~~

14 *(d) This act would extend this existing practice to considering*
15 *the effect of enforceable restrictions, put on land pursuant to an*
16 *affordable housing program that assists families in purchasing*
17 *their own homes, and silent second mortgages that may affect the*
18 *fair market value of that property.*

19 ~~(d)~~

20 *(e) Therefore, it is the intent of the Legislature in enacting this*
21 *act to further a state public policy of encouraging and maintaining*
22 *effective land use planning by ensuring that homes purchased*
23 *under an affordable housing program are valued for property*
24 *taxation purposes in a manner that reflects the restrictions on the*
25 *homes.*

26 *(f) It is also the intent of the Legislature, in enacting this act,*
27 *to make the necessary statutory changes to provide that, if a*
28 *homeowner is participating in an affordable housing program,*
29 *the purchase price for an affordable housing unit shall not include,*
30 *for purposes of taxation under the ad valorem property tax, the*
31 *amount stated in a trust deed recorded in conjunction with an*
32 *affordable housing unit.*

33 SEC. 2. Section 110 of the Revenue and Taxation Code is
34 amended to read:

1 110. (a) Except as is otherwise provided in Section 110.1, “full
2 cash value” or “fair market value” means the amount of cash or
3 its equivalent that property would bring if exposed for sale in the
4 open market under conditions in which neither buyer nor seller
5 could take advantage of the exigencies of the other, and both the
6 buyer and the seller have knowledge of all of the uses and purposes
7 to which the property is adapted and for which it is capable of
8 being used, and of the enforceable restrictions upon those uses and
9 purposes.

10 (b) For purposes of determining the “full cash value” or “fair
11 market value” of real property, other than possessory interests,
12 being appraised upon a purchase, “full cash value” or “fair market
13 value” is the purchase price paid in the transaction unless it is
14 established by a preponderance of the evidence that the real
15 property would not have transferred for that purchase price in an
16 open market transaction. The purchase price shall, however, be
17 rebuttably presumed to be the “full cash value” or “fair market
18 value” if the terms of the transaction were negotiated at arms length
19 between a knowledgeable transferor and transferee neither of which
20 could take advantage of the exigencies of the other. “Purchase
21 price,” as used in this section, means the total consideration
22 provided by the purchaser or on the purchaser’s behalf, valued in
23 money, whether paid in money or otherwise, but, beginning with
24 the lien date for the 2008–09 fiscal year and for each fiscal year
25 thereafter, does not include the amount stated in a trust deed,
26 recorded in conjunction with an affordable housing unit purchased
27 by its occupant, for which that occupant is the trustor and a
28 nonprofit or governmental agency selling authority is the
29 beneficiary, ~~and both have contracted that a periodic payment of~~
30 ~~principal and interest will not be required for at least 20 years~~ 30
31 *years, and a governmental restriction requiring the property to*
32 *remain an affordable housing unit for at least 30 years has been*
33 *recorded against the affordable housing unit.* There is a rebuttable
34 presumption that the value of improvements financed by the
35 proceeds of an assessment resulting in a lien imposed on the
36 property by a public entity is reflected in the total consideration,
37 exclusive of that lien amount, involved in the transaction. This
38 presumption may be overcome if the assessor establishes by a
39 preponderance of the evidence that all or a portion of the value of
40 those improvements is not reflected in that consideration. If a single

1 transaction results in a change in ownership of more than one
2 parcel of real property, the purchase price shall be allocated among
3 those parcels and other assets, if any, transferred based on the
4 relative fair market value of each.

5 (c) For real property, other than possessory interests, the change
6 of ownership statement required pursuant to Section 480, 480.1,
7 or 480.2, or the preliminary change of ownership statement
8 required pursuant to Section 480.4, shall give any information as
9 the board shall prescribe relative to whether the terms of the
10 transaction were negotiated at ~~arms~~ *“arm’s length.”* In the event
11 that the transaction includes property other than real property, the
12 change in ownership statement shall give information as the board
13 shall prescribe disclosing the portion of the purchase price that is
14 allocable to all elements of the transaction. If the taxpayer fails to
15 provide the prescribed information, the rebuttable presumption
16 provided by subdivision (b) shall not apply.

17 (d) Except as provided in subdivision (e), for purposes of
18 determining the “full cash value” or “fair market value” of any
19 taxable property, all of the following shall apply:

20 (1) The value of intangible assets and rights relating to the going
21 concern value of a business using taxable property shall not
22 enhance or be reflected in the value of the taxable property.

23 (2) If the principle of unit valuation is used to value properties
24 that are operated as a unit and the unit includes intangible assets
25 and rights, then the fair market value of the taxable property
26 contained within the unit shall be determined by removing from
27 the value of the unit the fair market value of the intangible assets
28 and rights contained within the unit.

29 (3) The exclusive nature of a concession, franchise, or similar
30 agreement, whether de jure or de facto, is an intangible asset that
31 shall not enhance the value of taxable property, including real
32 property.

33 (e) Taxable property may be assessed and valued by assuming
34 the presence of intangible assets or rights necessary to put the
35 taxable property to beneficial or productive use.

36 (f) For purposes of determining the “full cash value” or “fair
37 market value” of real property, intangible attributes of real property
38 shall be reflected in the value of the real property. These intangible
39 attributes of real property include zoning, location, and other
40 attributes that relate directly to the real property involved.

1 SEC. 3. Section 402.1 of the Revenue and Taxation Code is
2 amended to read:

3 402.1. (a) In the assessment of land, the assessor shall consider
4 the effect upon value of any enforceable restrictions to which the
5 use of the land may be subjected. These restrictions shall include,
6 but are not limited to, all of the following:

7 (1) Zoning.

8 (2) Recorded contracts with governmental agencies other than
9 those provided in Sections 422 and 422.5.

10 (3) Permit authority of, and permits issued by, governmental
11 agencies exercising land use powers concurrently with local
12 governments, including the California Coastal Commission and
13 regional coastal commissions, the San Francisco Bay Conservation
14 and Development Commission, and the Tahoe Regional Planning
15 Agency.

16 (4) Development controls of a local government in accordance
17 with any local coastal program certified pursuant to Division 20
18 (commencing with Section 30000) of the Public Resources Code.

19 (5) Development controls of a local government in accordance
20 with a local protection program, or any component thereof, certified
21 pursuant to Division 19 (commencing with Section 29000) of the
22 Public Resources Code.

23 (6) Environmental constraints applied to the use of land pursuant
24 to provisions of statutes.

25 (7) Hazardous wasteland use restriction pursuant to Section
26 25240 of the Health and Safety Code.

27 (8) A recorded conservation, trail, or scenic easement, as
28 described in Section 815.1 of the Civil Code, that is granted in
29 favor of a public agency, or in favor of a nonprofit corporation
30 organized pursuant to Section 501(c)(3) of the Internal Revenue
31 Code that has as its primary purpose the preservation, protection,
32 or enhancement of land in its natural, scenic, historical, agricultural,
33 forested, or open-space condition or use.

34 (9) Beginning with the lien date for the 2008–09 fiscal year and
35 for each fiscal year thereafter, restrictions on the resale price of
36 real property in a recorded real property deed or other recorded
37 real property transfer document for real property that was purchased
38 by its occupant through an affordable housing program operated
39 by a city, a county, the state, or a nonprofit organization.

1 (b) There is a rebuttable presumption that restrictions will not
2 be removed or substantially modified in the predictable future and
3 that they will substantially equate the value of the land to the value
4 attributable to the legally permissible use or uses.

5 (c) Grounds for rebutting the presumption may include, but are
6 not necessarily limited to, the past history of like use restrictions
7 in the jurisdiction in question and the similarity of sales prices for
8 restricted and unrestricted land. The possible expiration of a
9 restriction at a time certain shall not be conclusive evidence of the
10 future removal or modification of the restriction unless there is no
11 opportunity or likelihood of the continuation or renewal of the
12 restriction, or unless a necessary party to the restriction has
13 indicated an intent to permit its expiration at that time.

14 (d) In assessing land with respect to which the presumption is
15 un rebutted, the assessor shall not consider sales of otherwise
16 comparable land not similarly restricted as to use as indicative of
17 value of land under restriction, unless the restrictions have a
18 demonstrably minimal effect upon value.

19 (e) In assessing land under an enforceable use restriction wherein
20 the presumption of no predictable removal or substantial
21 modification of the restriction has been rebutted, but where the
22 restriction nevertheless retains some future life and has some effect
23 on present value, the assessor may consider, in addition to all other
24 legally permissible information, representative sales of comparable
25 lands that are not under restriction but upon which natural
26 limitations have substantially the same effect as restrictions.

27 (f) For the purposes of this section the following definitions
28 apply:

29 (1) "Comparable lands" are lands that are similar to the land
30 being valued in respect to legally permissible uses and physical
31 attributes.

32 (2) "Representative sales information" is information from sales
33 of a sufficient number of comparable lands to give an accurate
34 indication of the full cash value of the land being valued.

35 (g) It is hereby declared that the purpose and intent of the
36 Legislature in enacting this section is to provide for a method of
37 determining whether a sufficient amount of representative sales
38 information is available for land under use restriction in order to
39 ensure the accurate assessment of that land. It is also hereby
40 declared that the further purpose and intent of the Legislature in

1 enacting this section and Section 1630 is to avoid an assessment
2 policy which, in the absence of special circumstances, considers
3 uses for land that legally are not available to the owner and not
4 contemplated by government, and that these sections are necessary
5 to implement the public policy of encouraging and maintaining
6 effective land use planning. Nothing in this statute shall be
7 construed as requiring the assessment of any land at a value less
8 than as required by Section 401 or as prohibiting the use of
9 representative comparable sales information on land under similar
10 restrictions when this information is available.

11 SEC. 4. If the Commission on State Mandates determines that
12 this act contains costs mandated by the state, reimbursement to
13 local agencies and school districts for those costs shall be made
14 pursuant to Part 7 (commencing with Section 17500) of Division
15 4 of Title 2 of the Government Code.

16 SEC. 5. Notwithstanding Section 2229 of the Revenue and
17 Taxation Code, no appropriation is made by this act and the state
18 shall not reimburse any local agency for any property tax revenues
19 lost by it pursuant to this act.

20 SEC. 6. This act provides for a tax levy within the meaning of
21 Article IV of the Constitution and shall go into immediate effect.